REMARKS

The above amendments direct the claims to the treatment of rheumatoid arthritis. As discussed in the previous response, animal models such as those disclosed in this application and by Badger et al. show a link between the inhibition of TNFα and the treatment of rheumatoid arthritis. The specification provides *in vitro* raf kinase assays (and IC_{50} data) and *in vivo* assays (see pages 103 and 104). In similar fashion, one of ordinary skill in the art by performing the same or similar tests, can, by routine experimentation, determine the activity levels of each of the claimed compounds in treating rheumatoid arthritis. This is absolutely routine in the field. The Examiner has not presented any objective evidence to doubt the results reported in the application and has not presented any evidence that those skilled in the art require anything more than assays described in the application to identify active compounds. Therefore, the specification is objectively enabling.

The requirement for evidence of "actual therapeutic treatment of a disease associated with p38" is inconsistent with the MPEP. MPEP §2164.02 states that "compliance with the enablement requirement of 35 U.S.C. §112, first paragraph does not turn on whether an example is disclosed."

Restriction Requirement

Applicants maintain that the Restriction Requirement should be withdrawn in that the Examiner has required restriction within a single claim. Applicants respectfully submit that 35 U.S.C. § 121 does not permit restriction within a single claim as clearly indicated by the Court in *In re Weber et al.* 198 USPQ 328 (1978).

> As a general proposition, an Applicant has a right to have each claim examined on the merits. If an Applicant submits a number of claims, it may well be that pursuant to a proper restriction requirement, those claims will be disbursed to a number of applications. Such action should not affect the right of the Applicant eventually to have each of the claims examined in the form he considers to best define his invention. If however a single claim is required to be divided up and presented in several applications, that claim would never be considered on its merits.

> It is apparent that §121 provides the commissioner the authority to promulgate rules designed to restrict an application to one of several claimed inventions when these inventions are found to be "independent and distinct." It does not however provide a basis for an Examiner acting under the authority of the Commissioner to reject a particular claim on that basis.

Applicants submit that the examination should be extended to at least groups II and V, since both are directed to oxazoles.

No fee is believed to be due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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